

Voyeurism (Offences) (No.2) Bill

House of Lords Second Reading

23 October 2018

Introduction

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

This briefing addresses the issue of ‘up-skirting’ within the Voyeurism (Offences) (No.2) Bill 2017-19 (the Voyeurism Bill). It sets out the analysis of the Commission in relation to this new offence. Our views relate to international human rights law as well as our remit to strengthen the legal and policy frameworks that protect people from identity-based violence and harassment.

We very much welcome the introduction of this important new Bill. In addition, we make the following recommendations:

- The motivation element of the offence should be removed, or at the very least, two further motives should be added: ‘financial gain’ and ‘entertainment or amusement.’
- The Bill should include a new offence of ‘disclosure or distribution of up-skirting images.’

Context for the offence of up-skirting

Up-skirting is the act of covertly photographing or using equipment to observe underneath someone's clothing without their consent. It causes humiliation, distress and fear for victims, who are usually women and girls. It is based on an imbalance of power, as victims may fear a violent response if they confront a perpetrator.

The UN Committee that monitors the UN Convention on the Elimination of All Forms of Discrimination against Women has advised that gender-based violence takes multiple forms, and that it is not limited to physical acts of violence.¹ Gender-based violence can include harassment, coercion, and acts that cause sexual or psychological harm or suffering to women (as well as threats of such acts). In our view, this definition includes the act of up-skirting.

The continuum of violence against women, in its many forms, reflects wider structural gender inequalities. Violence is both a cause and a consequence of women's inequality. It impacts on women's dignity, safety, health and independence, and it represents one of the most pervasive human rights issues in Great Britain.

The Commission is committed to working to strengthen the legal and policy frameworks that protect people from identity-based violence, including harassment.² This includes pressing for changes to the law and non-legislative measures designed to tackle violence against women and girls. We support the introduction of this Bill, which seeks to fill an identified gap in the criminal law. We are pleased to see such strong cross-party support on this important issue.

Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) underlines that violence against women is a form of gender-based violence that is committed against women, **because** they are women. The Council of Europe states that '[t]he Convention leaves no doubt: there can be no real equality between women and men if women

¹ United Nations. '[Convention on the Elimination of All Forms of Discrimination against Women. General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19](#)'. July 2017. [Accessed 1 October 2018].

² Equality and Human Rights Commission. '[Business Plan 2018-19. 2018](#)'. [Accessed 15 October 2018]

experience gender-based violence on a large-scale and state agencies and institutions turn a blind eye.’³

Article 40 of the Istanbul Convention requires states to ‘[t]ake the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.’⁴ We consider that this Bill is a useful step for the UK Government to take towards meeting its commitments under the Convention.

The UK Government has signed, but not yet ratified the Istanbul Convention. **We urge the UK Government to urgently ratify, fully resource and implement the Istanbul Convention.**

Our analysis of the Bill

The Bill adds a new section (67A) to the Sexual Offences Act 2003, creating an offence of up-skirting when it is perpetrated for a specified purpose. These purposes are: for the sexual gratification of the perpetrator or others, or to humiliate, distress or alarm the victim.

The new offences would be triable either way. The maximum sentence following summary conviction would be 12 months imprisonment and/or a fine.⁵ The maximum sentence following conviction on indictment would be two years imprisonment. The Bill would provide for certain offenders to be placed on the sex offenders register if they are convicted of up-skirting for sexual gratification.⁶

We welcome the urgency with which this issue is now being considered by the UK Parliament. We note that up-skirting has been an offence for many years in Scotland.⁷ We support the creation of this new offence in England and Wales.

³ Council of Europe. ‘[The Istanbul Convention. Action against violence against women and domestic violence](#)’. [Accessed 15 October 2018]

⁴ Council of Europe. ‘[Convention on preventing and combating violence against women and domestic violence](#)’. [Accessed 5 September 2018].

⁵ The maximum sentence following summary conviction would be 6 months until s.154(1) of the Criminal Justice Act 2003 comes into force.

⁶ House of Commons Library. ‘[Briefing paper Number 8356. Voyeurism \(Offences\) \(No. 2\) Bill 2017-19](#)’. 17 August 2018.

⁷ Within [the offence of voyeurism, under section 9 of the Sexual Offences \(Scotland\) Act 2009](#). [Accessed 5 September 2018].

Anonymity

We welcome the automatic anonymity that will be provided for victims of up-skirting offences.⁸ We consider that this will encourage victims to report offences, and to provide them with the reassurance that they need to support prosecutions.

Motive for this offence

As it is currently drafted, the Bill will **only** criminalise up-skirting where the perpetrator does so for: the sexual gratification of themselves or others, or to humiliate, distress or alarm the victim.

During the Commons stages, there was substantial debate on the motivation element of the crime, including an amendment, tabled at Commons Report stage.⁹ We note the written evidence submitted by Professor Clare McGlynn from Durham University, who has relevant expertise on sexual violence and image-based sexual abuse.¹⁰ She highlights that ‘Sexual offences are about power and control, punishment, sexual entitlement, anger, entertainment, as well as sexual gratification’. She recommended that the Government removes the motive requirement for this offence from the Bill.

In written evidence, Alison Saunders, Director of Public Prosecutions stated that ‘It is not inconceivable that suspects will advance the defence that this purpose is not made out beyond reasonable doubt and/or that they had another purpose, such as ‘high jinks’.¹¹ She advised that ‘Consideration could be given as to whether purpose is a necessary or relevant element of the offence’.

In order to ensure that all instances of up-skirting are adequately addressed in the Bill, **we recommend the motivation element of the offence should be removed, or at the very least, two further motives should be added: ‘financial gain’ and ‘entertainment or amusement.’**

⁸ If these offences are created by way of inserting a new s.67A into the Sexual Offences Act 2003, victims will automatically be granted anonymity under s 1 and 2(1)(da) Sexual Offences (Amendment) Act 1992

⁹ House of Commons. ‘[Consideration of Bill \(Report Stage\). Voyeurism \(Offences\) \(No.2\) Bill. 5.](#)’ September 2018.

¹⁰ Professor Clare McGlynn. Voyeurism (offences) (No.2) Bill. ‘[Written evidence by Professor Clare McGlynn, Law School, Durham University](#)’. July 2018.

¹¹ Crown Prosecution Service. ‘[Written evidence to the Voyeurism \(Offences\) Bill Committee](#)’. July 2018.

Disclosure/distribution of up-skirting images

In light of the fact that up-skirting images are often circulated or end up on pornography websites, we are concerned that the Bill does not criminalise the disclosure or distribution of these images.¹² This may be undertaken by the photographer, or by another party. This is a significant gap that should be addressed to ensure that there is an appropriate criminal justice response to all associated behaviours.

We note that Scotland did not address the issue of disclosure and distribution in its original 2009 legislation, but did so at a later date, through supplementary legislation.¹³ The non-consensual disclosure of up-skirting (and other intimate) images is now criminalised under sections 2 and 3 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

A range of parties have expressed concerns about this issue, including the Mayor of London,¹⁴ and Dame Vera Baird QC, Police and Crime Commissioner for Northumbria.¹⁵ Victim Support raised this point in their written evidence.¹⁶ An amendment was also tabled at Commons Report stage.¹⁷ The Government advised that it will consider this issue further, along with other relevant offences.

Whilst we welcome this announcement, we are concerned that any potential legislative change could take years to come into force. **We therefore recommend that this Bill includes a new offence of disclosure or distribution of up-skirting images.** This would protect victims in the intervening period, and send out a clear message that up-skirting images must not be circulated.

Hate crime based on sex or gender

The legal framework for hate crime in England and Wales currently covers race, religion, sexual orientation, disability and transgender

¹² Professor Clare McGlynn. Voyeurism (offences) (No.2) Bill. '[Written evidence by Professor Clare McGlynn, Law School, Durham University](#)' and '[Written evidence submitted by Dame Vera Baird, QC, Police and Crime Commissioner \(PCC\) for Northumbria](#)'. July 2018.

¹³ House of Commons Library. '[Voyeurism \(Offences\) \(No.2\) Bill 2017-19. Briefing paper number 8356](#)'. August 2018.

¹⁴ Mayor of London. '[Voyeurism \(offences\) No.2 Bill – Public Bill Committee](#)'. July 2018.

¹⁵ Voyeurism (Offences) (No.2) Bill '[Written evidence submitted by Dame Vera Baird, QC, Police and Crime Commissioner \(PCC\) for Northumbria](#)'. July 2018.

¹⁶ Victim Support. Voyeurism (Offences) (No.2) Bill. '[Written evidence submitted by Victim Support](#)'. July 2018.

¹⁷ [Consideration of Bill \(Report Stage\). Voyeurism \(Offences\) \(No.2\) Bill](#). 5 September 2018.

identity. There are no separate or aggravated forms of offences, or enhanced sentencing provisions for hate crimes on the basis of a person's sex or gender. In 2014, the Law Commission called for a full scale review of the hate crime framework in England and Wales. We have endorsed this position, including when reporting to UN treaty bodies.¹⁸

During Commons Report stage, an amendment was proposed to introduce misogyny as an aggravating factor.¹⁹ In response, the Government announced it would ask the Law Commission to review the coverage of hate crime legislation.²⁰ This will include a review of how sex and gender should be covered. We very much welcome this development.

¹⁸ Most recently, in a report to the to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women 'Pressing for progress: women's rights and gender equality in 2018 Full report and recommendations'. Equality and Human Rights Commission. July 2018.

¹⁹ House of Commons. '[Consideration of Bill \(Report Stage\). Voyeurism \(Offences\) \(No.2\) Bill. 5](#)' September 2018.

²⁰ House of Lords Library Briefing. '[Voyeurism \(Offences\) \(No. 2\) Bill HL Bill 130 of 2017–19 Summary](#)'.

Further Information

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on [the Commission's website at www.equalityhumanrights.com](http://www.equalityhumanrights.com).

For more information on this briefing, please contact:

Parliamentary lead:

Katherine Perks, Katherine.Perks@equalityhumanrights.com
020 7832 7813

Policy lead:

Bridget O'Rourke, Bridget.O'Rourke@equalityhumanrights.com
0161 8298576